

Guide to

Short Form Agreement Between Client and Architect

DOCUMENT EIGHT

July 2000 Edition

Background

This guide is written to assist both the Client and Architect in completing the Short Form Agreement and to explain the appropriate use of the document and how to complete some of the more important parts of the document. Written suggestions are welcomed by the Architects' Association of New Brunswick (*AANB*).

This edition of the Short Form Agreement Between Client and Architect is based, in part, on the Ontario Association of Architects (OAA) Document 301. This Guide is based, in part, on the OAA Practice Bulletin D.2.

It is strongly recommended that all Architects have a written agreement with their Clients before any architectural services are provided. This is a requirement in the province of British Columbia.

A written agreement confirms the Client's expectations of the services which will be provided in connection with the project or assignment. The Agreement also confirms that the Client understands the responsibility to pay professional fees, reimbursable expenses and applicable taxes. A written agreement will help to minimize unfortunate misunderstandings between an Architect and Client which can lead to disputes and litigation.

*The use of the more comprehensive **Canadian Standard Forms of Agreement Between Client and Architect, National Practice Program Documents Six or Seven** is always recommended, particularly for larger or more complex projects.*

Recognizing, however, that Architects may otherwise proceed without a written agreement, a very basic "short form" agreement is a preferred alternative to an oral agreement. The Architect and Client should understand that this short form does not contain the detailed provisions of NPP Document Six or Document Seven and, as a result, this Short Form Agreement does not protect the Architect's or the Client's interests as effectively.

This Short Form Agreement is also useful as an interim agreement, permitting work to start while a more appropriate and complete agreement is being prepared and executed.

Recommended Procedure

1. Keep a supply of the Short Form Agreement Between Client and Architect, Document Eight. It is possible to create a similar Agreement on the letterhead of the architectural practice; however, there is value in promoting this Agreement to Clients as a “standard” which is produced by the architectural association.
 2. As soon as the terms of engagement have been negotiated with the Client, complete the Agreement including:
 - The date of the Agreement.
 - The correct legal name and the address of the Client.
 - The correct legal name and the address of the architectural practice.
 - The name or description of the project or the assignment, and the address or location where applicable. The use of an addendum for an appropriate description may be necessary.
 - A description of the services which you have been engaged to provide. If engineering or other consulting services are included, specifically state. The use of an addendum for an appropriate description may be necessary.
 - Details of the professional fees. Check the appropriate box(es) and complete the relevant blanks. Where the fee is calculated on a per diem basis or on an hourly basis, refer to the rates as set out in the Schedule of Fees of the AANB or appropriate tariffs of the Provincial Association of Architects, unless stated otherwise in the Agreement.
 - When the fee is calculated on a per diem or hourly rate basis, indicate “maximum upset fee” if applicable.
 - Note: Sometimes a Client will request a fixed price or limit to fees and expenses which is not to be exceeded without written authority. Such arbitrary limits may not be in the Client’s best interest. Also, the Architect may be accepting the risk of uncompensated fees and expenses. Accordingly the extent of the original allowance and its parameters should be clearly defined.
 3. Sign and have the Client or authorized representative sign two (2) copies of the Agreement. Provide a copy to the Client.
 4. Where the Agreement serves as an interim agreement:
 - Check the appropriate box.
 - Ensure that a subsequent agreement is executed as soon as practicable.
 - Ensure that any subsequent agreement includes the provision that it supersedes this interim agreement, as applicable.
 5. The form agreement with this Guide has been prepared to assist members of the AANB in carrying on their practice. AANB accepts no responsibility to a member with respect to the suitability or appropriateness of this form for a member’s practice or a Project other than to confirm that it is in compliance with AANB By-Laws if completed appropriately. It is recommended that a member have their own lawyer review the Agreement to ensure its appropriateness for their practice or a Project and to assist in its completion when necessary.
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Short Form Agreement Between Client and Architect

DOCUMENT EIGHT

AGREEMENT MADE AS OF: _____
(Date)

BETWEEN THE CLIENT:

AND THE ARCHITECT:

FOR THE PROJECT: _____
(Name and address or location and brief description, including size)

The Client and Architect agree to the General Conditions (noted on the attached pages) and to the following:

1. The Architect's services consist of:

2. The Client and the Architect agree to execute a more detailed agreement consistent with the **Canadian Standard Form of Agreement Between Client and Architect - Document Six or Seven**, or other National Practice Program (NPP) endorsed form of agreement

by _____ . (insert date) _____ Yes _____ No

3. The Client will pay the Architect fees as set out below together with reimbursable expenses.

<input type="checkbox"/> Fixed fee of \$ _____	<input type="checkbox"/> Fee calculated on a per diem basis: _____ _____
<input type="checkbox"/> Percentage-based fee, _____ % of Construction Cost	<input type="checkbox"/> Fee calculated on an hourly basis: _____ _____
<input type="checkbox"/> Retainer of \$ _____	
Note: Invoices are submitted monthly. HST will be invoiced in addition to all fees and expenses	

Reimbursable expenses are charged at cost plus 10% for administration.

For the purpose of calculating percentage-based fees, Construction Cost includes all applicable sales and value-added taxes (such as HST). The retainer is the minimum amount payable under this Agreement and will be credited against the final invoice. Accounts are submitted monthly and are due when rendered. Interest will be charged at 5% per annum above the prime rate of interest on accounts unpaid after 30 days. The prime rate of interest shall be the lowest rate of interest quoted by the Royal Bank of Canada for prime business loans on the date of the invoice or account.

SIGNED: _____
Client Architect

This Agreement is in compliance with AANB By-Laws if completed appropriately.

1. Representatives

Each party shall designate a representative who is authorized to act on behalf of that party and receive notices under this Agreement.

2. Compensation

Services rendered and reimbursable expenses will be invoiced in accordance with Section 3 of the face page of this Agreement.

Reimbursable expenses include, but are not limited to, the expenses of the Architect's Consultants, typesetting, copying, reproduction expenses, CAD plotting expenses, delivery, courier, fax, telex, long distance telephone charges, travel, lodging, photography and applicable sales and value - added taxes including HST.

2.1 Construction Cost means the contract price(s) of all Project elements designed or specified by or on behalf of the Architect, permit fees, contingency amounts, and all applicable taxes including such value added taxes as the HST, whether recoverable or not. Where there is no contract price for all or part of the Project, the Construction Cost shall be the estimated cost of construction as determined by the Architect at market rates at the anticipated time of construction. Construction Cost does not include the compensation of the Architect, the Architect's consultants and the land cost.

3. Suspension

The Architect reserves the right to suspend service on this Project if invoices are not paid within 30 days from the date of issue. The Architect will not be liable for any costs or delays caused by the suspension of services.

4. Termination

This Agreement may be terminated by either party upon no less than seven days' written notice should the other party fail substantially to perform its obligations in accordance with the terms of this Agreement through no fault of the party initiating the termination. This Agreement may be terminated by the Client upon at least seven days' written notice to the Architect in the event that the Project is permanently abandoned.

In the event of termination, the Architect shall be paid within 30 days of the date that an invoice is submitted for all services performed to the effective termination date, together with reimbursable expenses and all termination expenses and applicable taxes then due.

5. Environment

The Architect is **not** responsible for:

5.1 The discovery, reporting, analyses, evaluation, presence, handling, removal or disposal of toxic or hazardous substances or materials in any form at the place of the Project;

5.2 The advice of any independent expert respecting the exposure of persons, property or the environment to toxic or hazardous substances or materials in any form at the place of the Project, whether or not the consultant was selected by the Architect on behalf of the Client.

6. Professional Responsibility

In performing the services, the Architect will provide and exercise the standard of care, skill and diligence required by customarily accepted professional practices and procedures normally provided in the performance of the services contemplated in this engagement at the time during and the location in which the services were performed.

7. Copyright and Other Intellectual Property

Copyright and other intellectual property interests in the design, drawings, plans, sketches, graphic representations and specifications (the "Work Product"), including computer generated designs and plans and electronic copies of the Work Product, are products of the Architects' services and remain the property of the Architect whether the Project for which they have been prepared has been executed or not. Submissions or any distribution of the Work Product to assist the Client in meeting any regulatory requirements or for any other purposes in connection with the Project are not to be considered as publication in derogation of the Architect's reserved intellectual property and other rights. The Client may only use the Architect's design, drawings, specifications or other Work Product provided to the Client ("Design Documents") for the purpose of the Project and for no other purpose, and the Design Documents may only be used for that purpose upon full payment of the Architect's fees for the services rendered.

8. Construction Phase - Field Review

Field services are at the sole discretion of the Architect and are intended to observe whether the work of a contractor retained by the Client is being carried out in general conformity with the intent of the Design Documents and permits.

9. Limitation of Liability

All claims which the Client has or hereafter may have against the Architect in any way arising out of or related to the Architect's duties and responsibilities pursuant to this Agreement shall be limited to the lesser amount of \$250,000 or the Architect's fees for the services provided at net of all reimbursable expenses and applicable taxes. "Claim" or "claims" shall mean a claim or claims whether in contract or tort. "Architect" includes the Architect's officers, directors, employees, representatives and consultants.

The Architect shall not be responsible for:

- 9.1 The failure of any Contractor retained by the Client, to perform its contractual or other obligations required on the Project;
 - 9.2 The design of, or defects in, equipment supplied or provided by the Client for incorporation into the Project;
 - 9.3 Any cross-contamination resulting from sub-surface investigations;
 - 9.4 Any damage to subsurface structures and utilities which are to be identified and located by the Client and/or its consultants; or contractors.
 - 9.5 Decisions made by the Client which were made without the advice of the Architect or contrary to, or inconsistent with, the Architect's advice;
 - 9.6 Any consequential loss, injury or damages suffered by the Client, including but not limited to, loss of use or earnings, or interruption of business; and,
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- 9.7 The unauthorized distribution of any confidential document or report prepared by or on behalf of the Architect for the exclusive use of the Client.

10. Dispute Resolution

The parties shall make all reasonable efforts to resolve a dispute by amicable negotiations and agree to provide, on a without prejudice basis, full and timely disclosure of relevant facts, information and documents to facilitate these negotiations. If the parties have been unable to resolve a dispute, either party may, by written notice, require the appointment of a mediator in accordance with the latest edition of Canadian Construction Documents Committee (CCDC) 40, "Rules for Mediation and Arbitration of Construction Disputes", to assist the parties to reach agreement. Unless the parties agree otherwise, the mediated negotiations shall be conducted in accordance with those Rules amended as follows:

- 10.1 All references to the term "the Contract" within CCDC 40 are to be considered references to "this Agreement"
- 10.2 For references in CCDC 40 to Schedule, time, extension of time period, and termination if no agreement, the time period shall be adjusted from "10 Working Days" to read "15 calendar days".

11. Entire Agreement and Assignment

This Agreement represents the entire Agreement between the Architect and Client and replaces any other negotiations, discussions or representations. This Agreement is not assignable by the Client or the Architect without the consent in writing of the other party.
